

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

HARRY SHAROD JAMES-EL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:20CV203
	)	
ERIK HOOKS, et al.,	)	
	)	
Defendant(s).)	)	

**ORDER**

The Order and Recommendation of the United States Magistrate Judge, (ECF No. 4), was filed with the Court in accordance with 28 U.S.C. § 636(b) and, on May 21, 2020, was served on the parties in this action. Plaintiff has filed objections to the Recommendation, (ECF Nos. 6, 8), as well as an application to proceed *in forma pauperis*, (ECF No. 7), and a motion for appointment of counsel, (ECF No. 9).

The Court has appropriately reviewed the portions of the Magistrate Judge's report to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's report. Specifically, while Plaintiff, by filing an application to proceed *in forma pauperis*, has cured one flaw in his complaint identified by the Magistrate Judge, his complaint still does not state a proper claim for relief. (*See* Complaint, ECF No. 1; ECF No. 4 at 1; ECF No. 7.) The Court therefore adopts the Magistrate Judge's recommendation.

Additionally, the motion for appointment of counsel, (ECF No. 9), will be denied because the Court herein orders dismissal of this action and Plaintiff has not shown the circumstances of this case are exceptional. *See Miller v. Simmons*, 814, F.2d 962, 966 (4th Cir.

1987) (holding that, under 18 U.S.C. § 1915(d), “a plaintiff does not have an absolute right to the appointment of counsel” and “the plaintiff must show the case is one with exceptional circumstances”).

IT IS THEREFORE ORDERED that this action is FILED and DISMISSED *sua sponte* without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects cited above.

A judgment dismissing this action will be entered contemporaneously with this Order.

IT IS FURTHER ORDERED that Plaintiff’s application to proceed *in forma pauperis*, (ECF No. 7), is GRANTED with respect to this order only.

IT IS FURTHER ORDERED that Plaintiff’s motion for appointment of counsel, (ECF No. 9), is DENIED.

This, the 10<sup>th</sup> day of June 2020.

/s/ Loretta C. Biggs  
United States District Judge